

# Regular Meeting

<b>Agenda Item #</b>	6
<b>Meeting Date</b>	October 25, 2004
<b>Prepared By</b>	Catherine E. Waters City Clerk / Treasurer
<b>Approved By</b>	Barbara B. Matthews City Manager

<b>Discussion Item</b>	Takoma Junction Loan Extension
<b>Background</b>	In 1995 the City borrowed \$315,000 from Nations Bank (now Bank of America) to purchase the Zarpas property in Takoma Junction. The loan was for a term of three years with a balloon payment at the end of the three years. In both 1998 and 2001, the City extended the loan for consecutive three year terms.
<b>Policy</b>	The loan extension is per instructions from the City Manager.
<b>Fiscal Impact</b>	Per the original bond issuance documents, the principal payment will be \$20,166.67 for the next three years.
<b>Attachments</b>	Resolution, Promissory Note
<b>Recommendation</b>	Adopt the resolution.
<b>Special Consideration</b>	

Introduced by:

**Resolution #2004-  
Authorizing the City to Sign an Extension Note Regarding the Takoma Junction Loan**

**WHEREAS,** the City of Takoma Park enacted Ordinance No. 1995-30 authorizing the City to sell its 1995 Bond in the principal amount of \$315,000.00; and

**WHEREAS,** the City of Takoma Park executed a Promissory Note evidencing the acquisition of such 1995 Bond in which the terms of the 1995 Bond were set forth and the City of Takoma Park agreed to redeem such 1995 Bond after three years; and

**WHEREAS,** the City of Takoma Park adopted Resolution No. 1998-47 and later, Resolution No. 2001-77, to extend the redemption date for additional, consecutive three-year terms; and

**WHEREAS,** the Bond Purchaser and holder of the Note has agreed to reduce the interest rate to 5.98% in exchange for the City of Takoma Park agreeing to extend the redemption date for an additional three (3) years on the same terms and conditions as set forth in the 1995 Bond other than the interest rate (the Extension Note); and

**WHEREAS,** such action by the City of Takoma Park does not create any new obligation and does not constitute the incurring of any new indebtedness within the meaning of municipal debt-limit provisions. Such note is only a continuation of the obligation of the original 1995 Bond.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THAT** the City Manager is authorized to sign on behalf of the City of Takoma Park the Extension Note referenced above.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Attest:

---

Catherine E. Waters, CMC  
City Clerk / Treasurer



Bank of America  
Commercial Banking  
10 Light Street, 16th  
Baltimore, MD 21202

October 4, 2004

Ms. Catherine E. Waters  
Treasurer  
City of Takoma Park, MD  
7500 Maple Avenue  
Takoma Park, MD 20912

Dear Ms. Waters:

Please find enclosed, the Extension Note reflecting the terms and conditions of the General Obligation Bond of 1995, modifying the maturity date of September 15, 2007 and interest rate of 5.98%. The payment structure for annual principal payment of \$20,166.67 with monthly interest will remain the same. After you have reviewed the document, please have executed and return to me at your earliest opportunity.

As a reminder, please pay the scheduled annual principal payment for September 15, 2004 of \$20,166.67 with accrued interest of \$584.38.

Please feel free to contact me with any questions or concerns. Thank you for your business.

Sincerely,

Julie Aleshire  
Credit Support Associate  
Bank of America

Cc: Edmund Bianchi

Enclosures



2000-2004  
US Olympic Teams

Recycled Paper

**EXTENSION NOTE**  
**EVIDENCING BOND ACQUISITION**

FOR VALUE RECEIVED, the undersigned (individually and collectively, the "Borrower"), promises unconditionally to pay to the order of Bank of America, its successors and assigns (the "Bank") in accordance with the terms set forth in "The Council of the City of Takoma Park General Obligation Bond of 1995" (the "Bond") issued by the City of Takoma Park, Maryland, during regular business hours at the office of the Bank set forth above (or at such other office as the Bank may from time to time designate in writing to the Borrower), the principal amount of Two Hundred Sixteen Thousand Eight Hundred Thirty-Three Dollars and Thirty-Two Cents (\$216,833.32) or such amount remaining outstanding (the "Principal Amount"), together with interest thereon at the per annum rate of interest indicated below, said Principal Amount and Interest to be paid at the time(s) and in the manner indicated below:

1. Principal Repayment. The Borrower shall pay in consecutive installments of principal in the amount of Twenty Thousand One Hundred Sixty-Six dollars and Sixty-Seven Cents (\$20,166.67) commencing on the 15th day of September 2005, and continuing on the annual anniversary in each year thereafter. A final installment in the amount of the then unpaid balance of the Principal Amount, together with all accrued and unpaid interest thereon and all fees, late charges, costs and expenses, if any incurred or charged in connection therewith, being due and payable on the 15th day of September, 2007, (the "Maturity Date") unless extended by the Bank in accordance with the terms of the Bond.

2. Interest Repayment. Interest on this Note shall be calculated on the basis of a 365-day-year applied to the actual number of days the Principal Amount, or any portion thereof, is outstanding. From the date hereof until the Maturity Date (whether by acceleration, deceleration, extension or otherwise), the Borrower shall pay interest in arrears on the unpaid balance of the Principal Amount at the per annum rate of interest indicated below, commencing on the last day of October, 2004, and continuing on the last day of each month in each year thereafter.

3. Intentionally Deleted.

4. Interest Rate. Interest shall accrue and be payable on the unpaid Principal Amount from the date hereof until the Maturity Date of this Note (whether by acceleration, deceleration, extension or otherwise) at the fixed rate of 5.98%.

5. Intentionally Deleted.

6. Manner and Application of Payments. All payments due hereunder shall be: (a) paid in lawful money of the United States of America in immediately available funds, without offset, deduction or recoupment, and (b) applied in any manner which the Bank may, in its sole discretion, elect. Loan fees (if any), and other fees and expense incurred in connection with the closing of the loan shall be payable on demand.

7. Extension Period Interest Rate. After the Maturity Date (whether by acceleration, deceleration, extension or otherwise), to the extent permitted by law, the rate of interest on the unpaid Principal Amount shall, at the option of the Bank, be renegotiated with the City of Takoma Park (the "Extension Rate").

8. Prepayment. The Borrower may prepay the Principal Amount, in whole or in part, at any time without penalty or premium.

9. Obligations. The full and punctual observance and performance of all present and future duties, covenants and responsibilities due to the Bank by the Borrower in accordance with the terms of the Bond of any nature whatsoever, including to the fullest extent permitted by applicable law, all past, present and future indebtedness and liabilities of the Borrower to the Bank for the payment of money (extending to all principal, interest, fees, expense payments, liquidation costs, and attorney's fees and expenses), relating to or arising from the Bond and this Note whether similar or dissimilar, related or unrelated, matured or unmatured, direct or indirect, contingent or noncontingent, primary or secondary, alone or jointly with others, now due or become due, now existing or hereafter created, whether or not now contemplated, and how ever evidenced, shall collectively be referred to as the "Obligations".

10. Loan Documents. The Obligations are secured by, guaranteed by, and are a part of the obligations referred to in this Note and the Bond (collectively the "Loan Documents").

11. Wavier. The Borrower hereby waives demand, presentment for payment, protest, notice of consideration, the Bank may, without notice to or further consent of the Borrower and without in any manner releasing, lessening or affecting the obligations of the Borrower hereunder and under any of the Loan Documents: (a) release, surrender, waive, add, substitute, settle, exchange, compromise, modify, extend or grant indulgences with respect to (i) this Note, (ii) or the Bond; (b) complete any blank space in this Note or the Loan Documents according to the terms upon which the Obligations are made; and (c) grant any extension or other postponements of the time of payment hereof.

12. Provision of Financial Information. The Borrower shall promptly provide, to the Bank the annual audited statement of the City and such interim statements prepared by the City as the Bank shall at any time and from time to time require.

13. Default. The occurrence of any one or more of the following events shall constitute a default under this Note; (a) the failure of the Borrower to pay any of the Obligations when due (whether by acceleration, declaration, extension or otherwise) subject to the Default cure provisions in the Bond; (b) the failure of the Borrower to perform, observe or comply with any agreement, covenant or promise made under this Note or under any of the Loan Documents; (c) is any information contained in any financial statement, application, schedule or report or any other document given by the Borrower any other Obligor in connection with the other Obligor admitted to state any material fact or fact necessary to make such information misleading; (d) the filing of any petition for relief under the United States Bankruptcy Code or any similar federal or state statute by or against the Borrower or the failure of the Borrower to pay its debts as such debts become due; (e) the making of any application for the appointment of a receiver for, or of a general assignment for the benefit of creditors by, or the insolvency of, the Borrower; (f) the determination in good faith by the Bank that a material adverse change has occurred in the financial condition of the Borrower from the condition set forth in the most recent financial statement of the Borrower heretofore furnished to the Bank (or as disclosed to the Bank in any other manner); (g) the determination in good faith by the Bank that the security for this Note is inadequate. The occurrence or nonoccurrence of default under this Note shall in no way affect or condition the right of the Bank to demand payment at any time of any amounts which are payable on demand under the provisions of this Note or any of the Loan Documents regardless of whether or not such a default has occurred.

14. Rights and Remedies Upon Default. In the event of a default hereunder, the Bank may, at its option and without notice to the Borrower; (a) declare all or any part of the unpaid Obligations, together with all accrued and unpaid interest thereon, to be immediately due and payable without presentment, demand or notice which are hereby expressly waived; (b) exercise its right of setoff against any money, fund, credits or other property of any nature whatsoever of the Borrower signing this Note, now or at any time hereafter in possession of, in transit to or from, under the control or custody of, or on deposit with, the Bank or any affiliate of the Bank in the capacity whatsoever, including without limitation, any balance of any deposit account and any credits with the Bank or any affiliate of the Bank; (c) terminate any outstanding commitments of the Bank to the Borrower; and (d) exercise any and or all rights, powers and remedies provided for in the Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise.

15. Collection. If this Note is placed in the hands of any attorney for collection after its maturity (whether by acceleration, deceleration, extension or otherwise), the Borrower shall pay to the Bank on demand all costs and expenses including, without limitation, all attorney's fees and expenses incurred by the Bank in collecting the unpaid balance of the Principal Amount or in successfully defending any counterclaim brought by the Borrower contesting the Bank's right to collect the unpaid balance of the Principal Amount. All of such costs and expenses shall bear interest at the default rate of interest described herein, from the date of payment by the Bank until repaid in full.

16. Intentionally Deleted.

17. Confession of Judgment. Intentionally deleted.

18. Remedies Cumulative. Each right and remedy of the Bank under the Loan Documents or now or hereafter existing at law or in equity by statute or other applicable laws shall be cumulative and concurrent, and the exercise of them shall not preclude the simultaneous or late exercise by the Bank of any or all such other rights and remedies. No failure or delay by the Bank to insist upon the strict performance of any provisions of this Note or of the Loan Documents or to exercise any right or remedy upon a default hereunder shall constitute a waiver thereof, or preclude the Bank from exercising any such right or remedy. By accepting full or partial payment after the due date of any amount of principal and interest on this Note, or other amounts payable on demand, the Bank shall not be deemed to have waived the right either to require prompt payment when due and payable of all other amounts of principal of or interest on this Note or other amounts payable on demand, or to exercise any rights and remedies available to collect all such other amounts due and payable under this Note.

19. Choice of Law; Consent to Jurisdiction. This Note shall be governed by, construed and interpreted in accordance with the laws of the State of Maryland (excluding the choice of law rules thereof). The Borrower signing this Note hereby (a) agree that all disputes and matters whatsoever arising under, in connection with, or incident to this Note shall be litigated, if at all, in and before a court located in the State of Maryland, United States of America, to the exclusion of the courts of any other state or country and (b) irrevocably submit to the non-exclusive jurisdiction of any Maryland court or federal court sitting in the State of Maryland in any action or proceeding arising out of or relating to this Note, and hereby irrevocably waive any objection they may have to the laying of venue of any such action or proceeding in such court and any claim they may have that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit or in any other manner provided by law.

20. Notice. Any notice, demand, request or other communication which the Bank or the Borrower may be required to give hereunder shall be in writing, and shall be given: (a) by hand-delivery; (b) by facsimile transmissions; (c) by commercial overnight courier; or (d) by United States regular mail, postage prepaid. Such notice, demand, request or other communication shall be addressed as follows, or to such other addresses as the parties may designate by like notice:

If to the Borrower:           City of Takoma Park  
7500 Maple Avenue  
Takoma Park, Maryland 20912  
Attn: City Administrator

If to the Bank:               Bank of America  
10 Light Street  
Baltimore, Maryland 21202  
Attn: Edmund Bianchi

Any communication hereunder will be deemed given and effective (e) when actually received, in the case of hand delivery, (f) when deposited in the United States mail or with such courier, in the case of first class mail or overnight courier, or (g) when completely sent and received, as evidenced by a transmission report from sender's facsimile machine, in the case of facsimile transmission.

21. Invalidity of Any Part. In the event that any of one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Note operate or would prospectively operate to invalidate this Note, then and in any of those events, the following shall occur: (a) the provision(s) shall be enforced to the fullest extent of its validity, legality and enforceability; or (b) if such provision would operate so as to invalidate this entire Note, only such provision(s) shall be void as though not herein contained, and the remainder of the clauses and provisions of this Note will remain in full force and effect. In any event, if any such provision pertains to the repayment of the indebtedness evidenced by this Note, then and in such event, at the Bank's option, the outstanding Principal Amount, together with all accrued and unpaid interest thereon, shall become immediately due and payable. In no event shall this Note or the Loan Documents operate to cause the payment to the Bank by the Borrower or any Obligor of any amounts, whether for the use, forbearance of detention of money or for any other matter governed by the Loan Documents, which exceed the permitted maximum amounts therefor under the applicable law. If for any circumstances whatsoever fulfillment of such provision shall be prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity.

22. Public Purposes. The Borrower acknowledges and warrants that (a) the indebtedness evidenced by this Note and the "Obligations", as used herein, are incurred for a public purpose, and (b) all proceeds will be used solely in connection with such public purpose.

23. Miscellaneous. The paragraph headings of this Note are for convenience only, and shall not limit or otherwise affect any of the terms hereof. Words unused herein shall be deemed to refer to the singular, plural, masculine, feminine or neuter as the identity of the person or entity or the context may require. This Note and related Loan Documents, if any, constitute, the entire agreement between the parties with respect to their subject matter and supersede all prior letters, representations, or agreements, oral or written, with respect therein. If this Note is a renewal, extension or modification of the terms of any existing obligation of the Borrower to the Bank, which obligation is secured by an interest in real property, the Borrower and the Bank agree that this Note is not intended as a novation, but is rather intended only to renew, extend or modify the Obligation to the extent applicable. The Bank may, without notice to or consent of the Borrower, sell, assign, transfer or grant participations in all or any part of the Obligations evidenced by this Note to others at any time and from time to time, and the Bank may divulge to any potential assignee, transferee or participant, and to any affiliate or subsidiary of the Bank all information, reports, financial statements and documents obtained in connection with this Note and any other Loan Documents or otherwise. No modification, change, waiver or amendment of this Note shall be deemed to be made by the Bank unless in writing signed by the Bank, and each such waiver, if any, shall apply only with respect to the specific instance involved. No course of dealing or conduct shall be effective to amend, modify, waiver, release or change any provisions of this Note or the Loan Documents. In addition, notwithstanding the entry of any judgment under or in connection with this Note, the unpaid balance of the Principal Amount shall continue to bear interest at the applicable rate or rates provided for in the Note. All Obligations of the Borrower to the Bank shall be binding upon and enforceable against the Borrower and the Borrower's personal representatives, successors, heirs and assigns. This Note may be executed in any number of counterparts, all of which when taken together shall constitute one Note.

24. WAIVER OF JURY TRIAL. THE BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY LITIGATION BETWEEN THE HOLDER OF THIS NOTE AND THE BORROWER ARISING OUT OF THIS NOTE.

25. Intentionally Deleted.

26. Intentionally Deleted.

IN WITNESS WHEREOF, and intending to create an instrument executed under seal, the Borrower(s) have duly executed this Note under seal as of the day and year first written. Each of the undersigned adopts as his or her seal the work ("SEAL") appearing beside or near his or her signature below.

CITY OF TAKOMA PARK, MARYLAND

BY: \_\_\_\_\_  
Kathryn H. Porter, Mayor  
City of Takoma Park

---